

PETITION THE BISHOP

To Try to Stop a Break-up

When a faithful spouse wants to stop a separation or divorce, he or she can ask the bishop to do the following:

- Try pastoral means of reconciliation (canon 1695)
- Mediate between the spouses (canon 1446 §2)
- Issue a decree of separation in a case of malicious abandonment where the abandoner fails to reconcile
- Order reparation for material harm done (canon 1729 §1)
- Take effective measures to dispel any scandal
- Preserve the Sacraments from sacrilege
- Instruct parties about the parameters of a separation plan that would be in accord with divine law

Petition a faithful spouse can use
to ask the bishop to intervene:

MarysAdvocates.org/petition_bishop.html

NOTES CONTINUED

- (6 continued) JUGIS, Peter J. in New Commentary on the Code of Canon Law. Ed. Beal, Coriden, Green. Mahwah: Paulist Press, 2000. p. 1791. "The diocesan bishop may also grant permission for the spouses to approach the civil forum in those places where the civil sentence of separation is not contrary to divine law."; BROWN, Phillip J. "Legal Separation: A Pastoral Alternative." Studies in Church Law IV. Bangalore, India: St. Peter's Pontifical Institute, 2008. 215-252, p. 246. "The competent authority for giving this permission [(Mary's Advocates' note) to approach the civil forum] is the Bishop of the diocese where the parties are living."
- (7) KING, James P. The Canonical Procedure in Separation Cases, a Historical Synopsis and a Commentary. Washington, D.C.: Catholic University of America, 1952. p. 51.
- (8) *Coram Parrillo*, Sentence of 4 May 1929, *Sacrae Romanae Rotae Decisiones*, Vol. XXI, pp. 189-193, n. 4.
- (9) https://web.archive.org/web/20151008061644/http://www.usmarriagelaws.com/search/united_states/annulment_laws
- (10) <https://contracts.uslegal.com/frequently-asked-questions/>.
- (11) WEINANDY, Thomas, O.F.M. Cap. The Sacrament of Reconciliation And Marriage. www.usccb.org, 2014.

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JUSTICE

Separation Should be Rare

Spouses accept some level of difficulty, and common issues are listed in an evaluation of conscience published by the USCCB:

- manipulating in order to get one's own way
- speaking in a demeaning or negative way
- injuring the other through taunting and negative teasing
- bickering out of stubbornness and selfishness (11)

While these are sinful, they are not likely to be bad enough to justify separation of spouses, and the spouse being mistreated is to exercise forbearance. Other offenses listed on the USCCB's evaluation of conscience, however, can be grave enough to justify separation of spouses, for example, physical abuse or adultery.

By invoking canon law on separation of spouses, Catholics want only to have separations that are in accord with divine law.

NO-FAULT DIVORCE

According to canon law, a spouse is not permitted to separate without a legitimate cause.

"No-fault Divorce" is against canon law and immoral because a divorce is granted when one spouse merely lives apart for a time, claims that the parties are incompatible or have irreconcilable differences, or claims that the relationship is irretrievably broken. With no-fault divorce, there is no obligation to maintain a common home for the spouse and any children. The party causing the breakup is routinely rewarded.

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 Mary's Advocates

SEPARATION & DIVORCE

CATHOLIC PERSPECTIVE

MARRIAGE RITE

Assent to Three Conditions

- Have you come here to enter into marriage without coercion, freely and wholeheartedly?
- Are you prepared to love and honor each other for as long as you both shall live?
- Will you accept children lovingly from God, and bring them up according to the law of Christ and his Church? (optional for elderly)

Consent – Solemn Vow

Those marrying make a promise, "I take you for my lawful wife (or husband), to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish until death do us part."

CANON LAW

Obligation to Live in Same Home

Husband and wife should live together unless one did something severe enough to give the other legitimate cause to separate (see canon 104, 1151). Emotional detachment and simple annoyances are not a basis for separation.

Presumption of Validity

Whether a just reason exist for separation of spouses should be considered prior to questioning the validity of marriage. All marriages are presumed valid until proven otherwise (canon 1060).

CIVIL ANNULMENT

If one party never truly entered a Catholic marriage (e.g., a woman marrying for money), then a just outcome might be achievable in a civil annulment. Or, if one party never truly entered a marriage because of a mental disturbance making him or her incapable of consent, then petitioning for a civil annulment might be more appropriate than seeking a civil divorce.

Civil annulment is the process by which a Court states that a marriage never legally existed. It must be based on mental illness, fraud, forced consent, physical incapacity to consummate the marriage, lack of consent to underage marriage or bigamy (9). In the case of civil annulment, the innocent party can claim no financial obligation to support or give property to the party at fault. In a fraudulent contract, the innocent party can claim the right that economic injuries be financially repaired (10).

NOTES

- (1) Exegetical Commentary Code of Canon Law. Ed. Angel Marzoa, Jorge Miras, Rafael Rodriguez-Ocana. Woodridge, IL: Midwest Theological Forum, 2004, p. 1585.
- (2) Tribunal of the Roman Rota, *Coram Florczak*, Sentence of 30 June 1928, in *Sacrae Romanae Rotae Decisiones*, Vol. XX (1928), pp. 267-272. [Translation by Mary's Advocates]
- (3) Exegetical Commentary of the Code of Canon Law. (Canon 1153, "Malicious Abandonment" p. 1585-1586); DOHEYN, William J.. Canonical Procedure in Matrimonial Cases: Informal Procedure, 2nd Ed., Vol. II, Milwaukee: The Bruce Publishing Company, 1948, pp. 635, 659.
- (4) Catechism of the Catholic Church (CCC), n. 2384, 2385.
- (5) Catechism of the Catholic Church (CCC), n. 2383.
- (6) The *Processibus Specialibus* precepts for cases of separation of spouses are contained 1983 *CIC* canon 1692, §§1-3. Canon 6 §2 shows "Insofar as they repeat former law, the canons of this [1983] Code must be assessed also in accord with canonical tradition." Canon 6, §1, shows that when the 1983 "Code takes force, the following are abrogated: 2° particular laws contrary to the prescripts of this Code unless other provision is expressly made for particular laws." Canon 1692 expressly makes provisions for particular laws contrary to its prescripts: "Unless other provision is legitimately made in particular places, a decree of the diocesan bishop or a judicial sentence can decide the personal separation of baptized spouses according to the norm of the following canons" (c. 1692, §1). No particular law, or decree, has been enacted validly by a plenary council of the USCCB that is contrary to the prescripts of canon 1692. (continued)

Divorce can only be Tolerated

Divorce is immoral and a grave offense against the natural law (4). The separation of spouses can be legitimate in certain cases provided for by canon law (5).

In the United States, the permission of the Bishop or his mandated delegate, is required before a spouse can approach the civil forum to obtain separation from bed and board (6). In other words, before a spouse files in the civil court for divorce or civil separation, he or she must have permission from the Bishop.

Proper Role of the Civil Courts

Marriage cases of the baptized belong to the ecclesiastical judge by proper right (canon 1671). Civil courts that attempt to relieve a spouse of his or her full obligation to support the marital home or maintain the common conjugal life, when the other has done nothing grave enough to justify separation, contradict divine and canon law.

Separation Plan in Accord with Divine Law

When spouses live apart, suitable child support and provisioning for the authentic education of children must always be provided for (see canon 1154). Historically, Church decrees normally gave the care of the children to the innocent party to be reared at the expense of the culpable partner (7). The appellate Tribunal of the Roman Rota ruled that a spouse having caused the breakup of a marriage is not due support from the innocent party (8).

The spouse that causes a marital breakup without a legitimate cause is obliged to reconcile, and should be accountable to contribute his or her share to the material upkeep of the family home. Ecclesiastical authority is competent to provide guidance regarding parties' obligations toward each other and their children in accord with divine law. The parties could confirm these obligations in writing with intent to give them binding effect in the civil forum.

Reasons to Separate: Danger or Adultery

"A spouse who occasions grave danger of soul or body to the other or to the children, or otherwise makes the common life unduly difficult, provides the other spouse with a lawful reason to leave" (canon 1153, § 1). For separation due to mental or physical cruelty to be justified, the behavior must be dangerous, it must be continuous, and separation must be the only way to solve the problem (note 1). In these cases, when the cause for the separation ceases, conjugal living must be restored unless ecclesiastical authority has established otherwise (canon 1153, § 2).

An ecclesiastical separation decree or sentence authorizes spouses, who would otherwise have the obligation to live together, to live apart. The Catholic Church's global court of appeal has ruled, "light injustices from abusive words or the incompatibility of the personalities of the spouses which make cohabitation troublesome cannot be considered causes sufficient to separate the spouses" (2).

Adultery by one party gives the other party an acceptable reason to live apart. Nevertheless, the innocent party is encouraged to forgive the adulterous partner. If the innocent spouse has separated voluntarily, the spouse is to introduce a cause for separation within six months to the competent ecclesiastical authority (canon 1152, § 3). If, after having discovered the adultery, the innocent spouse lives with the other for six months and does not petition the ecclesiastical or civil authority, he or she is presumed to have forgiven the other (see canon 1152, § 2).

Desertion and Malicious Abandonment

If one spouse effectuates separation when the other has done nothing bad enough to justify it, the one who causes separation is an *abandoner*. Desertion, or malicious abandonment is considered by the Church to be a legitimate basis for an ecclesiastical separation decree or sentence (3). The ecclesiastical decision can help an abandoner recognize the wrongful behavior and reform his or her conduct.